United Nations A/64/213

General Assembly

Distr.: General
3 August 2009

Original: English

Sixty-fourth session
Item 71 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Human rights of migrants

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, submitted in accordance with Assembly resolution 63/184 and Human Rights Council resolution 8/10.

* A/64/150.

09-43777 (E) 240809

Please recycle

Report of the Special Rapporteur on the human rights of migrants

Summary

The present report, on activities carried out between January 2008 and June 2009, is submitted pursuant to General Assembly resolution 63/184 and Human Rights Council resolution 8/10. The report summarizes the activities undertaken by the Special Rapporteur on the human rights of migrants during the period under review and highlights a number of issues in focus related to the protection of the human rights of migrants, including the protection of children in the context of migration, a number of illustrative good practices and some of the major challenges encountered in the protection of the human rights of migrants, which he deems worthy of special attention.

Contents

		Page
I.	Introduction	3
II.	Activities of the Special Rapporteur	3
	A. Communications with Member States	5
	B. Country visits	6
III.	Issues in focus	8
	A. The protection of children in the context of migration	8
	B. Good practices	15
	C. Main challenges	17
IV.	Conclusions and recommendations	20

I. Introduction

1. The present report has been submitted to the General Assembly by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, pursuant to Assembly resolution 63/184, entitled "Protection of Migrants", and Human Rights Council resolution 8/10, entitled "Human rights of migrants: mandate of the Special Rapporteur on the human rights of migrants".

2. In the present report, the Special Rapporteur provides a summary of his activities carried out between January 2008 and June 2009 and highlights issues related to the protection of children in the context of migration, a number of illustrative good practices and some of the major challenges encountered in the protection of the human rights of migrants.

II. Activities of the Special Rapporteur

3. The Special Rapporteur carries out his activities in accordance with Human Rights Council resolution 8/10. Human Rights Council resolutions 9/5 and S-10/1 and Assembly resolutions 62/156 and 63/184 provide further thematic guidance for the activities of the Special Rapporteur.

4. During the reporting period, the Special Rapporteur participated in a number of events, as set out below:

(a) On 6 March 2008, the Special Rapporteur participated in an event on the theme "Challenges of irregular migration", organized by the Office of the High Commissioner for Human Rights and the Geneva Office of the Friedrich Ebert Foundation in parallel with the seventh session of the Human Rights Council;

(b) From 1 to 3 June 2008, the Special Rapporteur participated in a training programme on international and regional human rights systems organized in Sweden by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and the Inter-American Institute for Human Rights;

(c) From 23 to 27 June 2008, the Special Rapporteur attended the fifteenth meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Human Rights Council, held in Geneva, and participated in the drafting of the report submitted to the Council at its tenth session (A/HRC/10/24). He also participated in a seminar on the theme "Working with the United Nations special procedures system to fight torture and other forms of ill-treatment by acting on their economic, social and cultural root causes", organized by the World Organization Against Torture in Geneva;

(d) From 30 July to 2 August 2008, the Special Rapporteur participated in a workshop on the theme "Immigration and integration", organized by the University of Jaén, Spain;

(e) From 24 to 26 August 2008, the Special Rapporteur participated in the regional conference for Africa, held in Abuja, as part of the preparations for the Durban Review Conference, held in Geneva in April 2009;

(f) From 11 to 13 September 2008, the Special Rapporteur participated in the third World Social Forum on Migration, held in Rivas-Vaciamadrid, Spain;

(g) On 30 September and 1 October 2008, the Special Rapporteur attended the International Meeting on the Protection of the Rights of Children in the Context of International Migration, held in Mexico City and organized by the Office of the United Nations High Commissioner for Human Rights and the Government of Mexico;

(h) On 24 and 25 October 2008, the Special Rapporteur participated, together with the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, in the 2008 joint regional consultation on migrant domestic workers, organized by the Asia Pacific Forum on Women, Law and Development, the Coordination of Action Research on AIDS and Mobility and the Global Alliance Against Traffic in Women, held in Manila;

(i) From 27 to 29 October 2008, the Special Rapporteur attended the second Global Forum on Migration and Development, held in Manila;

(j) On 7 November 2008, the Special Rapporteur participated in the fifth International Congress on Migration, organized by Rafael Landívar University and the Jesuit Migrant Service, in Guatemala City;

(k) On 13 November 2008, the Special Rapporteur participated in the 2008 Robert G. Mead, Jr., Lecture at the Centre for Latin American and Caribbean Studies at the University of Connecticut, Hartford, United States of America;

(l) On 18 November 2008, the Special Rapporteur attended a working group on United States-Mexico migration, held at the Woodrow Wilson International Centre for Scholars, in Washington, D.C.;

(m) From 20 to 24 April 2009, the Special Rapporteur participated in the Durban Review Conference, held in Geneva, pursuant to Assembly resolution 61/149;

(n) On 24 April 2009, the Special Rapporteur participated in an event on the theme "Migration, discrimination and economic, social and cultural rights", held in parallel with the Durban Review Conference and organized by the Office of the United Nations High Commissioner for Human Rights, with the participation of the International Labour Organization, the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration;

(o) On 2 and 4 June 2009, the Special Rapporteur participated as an invited guest in events on the theme "The global economic crisis: implications for migration and development" and "Migrant children — unprotected and neglected in migration policies?", held in parallel with the eleventh session of the Human Rights Council and organized by Migration Forum Asia, Migrants Rights International, Platform for International Cooperation on Undocumented Migrants and National Network for Immigrant and Refugee Rights;

(p) On 3 June 2009, the Special Rapporteur participated as an invited guest in an event on the theme "Migrant domestic workers forging ahead towards an ILO convention: challenges and opportunities", held in parallel with the eleventh session of the Human Rights Council and organized by Migration Forum Asia, Migrants Rights International and the Asian Migrant Domestic Workers Alliance. Also on 3 June, he participated in an expert meeting on migration and peace, organized by the Society for International Human Rights Law of Spain.

5. During the period under review, the Special Rapporteur issued the following statements:

(a) On 15 July 2008, the Special Rapporteur issued a joint statement with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the Independent Expert on Minority Issues, Gay J. McDougall, on the stigmatization of the Roma community in Italy;

(b) On 18 July 2008, the Special Rapporteur, together with nine other mandate holders, issued a joint statement on the European Union return directive;

(c) On 6 October 2008, the Special Rapporteur, together with 12 other mandate holders, issued a joint statement on the occasion of Dignity and Justice for Detainees Week;

(d) On 18 December 2008, on the occasion of the celebration of International Migrant's Day, the Special Rapporteur issued a joint statement with the Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Abdelhamid El Jamri, calling for wider ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

A. Communications with Member States

6. The Special Rapporteur continued to receive information about the situation of migrants worldwide and to exchange communications with Governments. A summary of the communications sent in the period from January 2008 to March 2009, together with Government replies, was included as an addendum to the 2009 annual report, submitted to the Human Rights Council at its eleventh session (A/HRC/11/7/Add.1).

7. The report shows that, in situations where violations of the human rights of migrants are alleged to have occurred, allegations have included: (a) arbitrary detention and incommunicado detention of migrants; (b) repatriation of migrants facing the threat of torture in countries of origin; (c) racism, xenophobia, discrimination and related intolerance against migrants; (d) threats to the life and the physical and personal security of migrants; (e) summary executions; (f) disproportionate use of force by law enforcement officials towards persons attempting to cross borders; (g) expulsion of migrants married to nationals; (h) torture and other cruel, inhuman or degrading treatment or punishment; (i) threats to freedom of association, including the right to form and join trade unions; (j) collective deportations and collective expulsions; (k) enforced disappearances; and (l) violence against migrant women.

8. The Special Rapporteur would like to thank the Governments of Belgium, France, Guatemala, the Islamic Republic of Iran, Italy, Japan, Mexico, Panama, Saudi Arabia and Spain for their collaboration in responding to his communications and to remind Governments that have not responded to do so and to address all concerns raised in each communication.

9. A report on further communications exchanged with Governments will be submitted at a forthcoming session of the Human Rights Council.

B. Country visits

10. During the period under review, the Special Rapporteur visited Mexico (9 to 15 March 2008), Guatemala (24 to 28 March 2008), Romania (15 to 20 June 2009) and the United Kingdom of Great Britain and Northern Ireland (22 to 26 June 2009). In 2009, the Special Rapporteur also plans to visit Senegal, at the invitation of the Government.

Mexico

11. The Special Rapporteur undertook an official visit to Mexico from 9 to 15 March 2008. His country visit report is contained in an addendum to his report to the Human Rights Council at its eleventh session (A/HRC/11/7/Add.2).

12. In his report, the Special Rapporteur referred to Mexico as a country of regional migration flows to the United States of America and from Central America, and reflected on the legal framework pertaining to the human rights of migrants at the federal level, underscoring gaps in the implementation of existing laws and noting problematic policies. He also analysed issues related to various groups reflected in the Mexican migrant phenomenon, including the Mexican diaspora and deportees from the United States, migrant workers, migrant children, including unaccompanied minors, child labourers and migrant women. Subsequently, he drew attention to key migration challenges, including assistance to migrants, as well as border control and the detention of migrants, organized crime networks and impunity for violators of human rights of migrants and corruption among judicial law enforcement officials.

13. The Special Rapporteur also highlighted some of the efforts made by Mexican authorities to improve the handling of detention centres (especially overcrowding), the training of border officials, return and the protection of children. Among his concerns, the Special Rapporteur noted reports of impunity for instances of corruption, including bribery and extortion, violence against women and trafficking in children. The Special Rapporteur also recommended that the Government address many issues of concern that warrant further attention.

Guatemala

14. The Special Rapporteur undertook an official visit to Guatemala from 24 to 28 March 2008. His country visit report is contained in an addendum to his report to the Human Rights Council at its eleventh session (A/HRC/11/7/Add.3).

15. In his report, the Special Rapporteur referred to Guatemala as a country of origin, destination and, in particular, transit of migrants in Central America, and reflected on the national and international legal framework for the protection of migrants, as well as on the public policies and programmes put in place by the Government. He noted the interest of the Government in addressing some of the problems related to the human rights of migrants, but observed with concern that there were certain gaps and ambiguities in the legislative framework regulating migration in Guatemala.

16. The Special Rapporteur also addressed a number of issues, including, but not limited to, smuggling and trafficking in persons; unaccompanied minors; extortion and bribery in the judicial system and the police forces; the right to equality and the

principle of non-discrimination; domestic and farm workers; and the fight against impunity and the strengthening of the judiciary, with a view to appraising the situation relating to the human rights of migrants in Guatemala. He also highlighted efforts made by the Guatemalan authorities to adopt a more comprehensive approach to the management of migration and to facilitate the return to their families of non-accompanied migrant children deported from Mexico. He made some recommendations for the full realization of the human rights of migrants in Guatemala. He also commended the work accomplished by civil society and made recommendations aimed at ensuring the protection of migrants and combating impunity for violations of their human rights.

Romania

17. The Special Rapporteur undertook an official visit to Romania from 15 to 20 June 2009. During his visit, the Special Rapporteur met with representatives of a number of ministries and agencies responsible for migration governance, law enforcement, countering transnational organized crime and trafficking in persons and the protection of migrants and their families at the national and county level, including the Ministry of Foreign Affairs; the Ministry of Administration and the Interior; the Ministry of Labour, Family and Equal Opportunity; the Parliament; the National People's Advocate; and the National Council for Combating Discrimination. He also met with border control authorities and senior officials of the National Agency Against Trafficking in Persons, but regretted not having been able to interview persons benefiting from victims protection programmes. He visited Bucharest, Galati, Constanta, Tulcea, Otopeni and Pitesti. He also visited centres where foreigners in an irregular situation are accommodated and was provided access to interview some of them on a random basis.

18. At the conclusion of his visit, the Special Rapporteur highlighted labour migration as one of the key issues for domestic and foreign policy in Romania, given the fact that both immigration and outmigration have been increasing in recent years. He was further informed about two contrasting trends: the decrease in the trafficking in persons on the one hand, and the increase in the smuggling of migrant workers on the other. He noted the Government's interest in addressing some of the problems related to the human rights of migrants, but observed with concern that there were certain gaps and ambiguities in the legislative framework regulating the protection of migrant workers and expressed regret that Romania had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which had been adopted by the General Assembly in 1990. The Special Rapporteur will submit a report on his country mission to Romania to the Human Rights Council at a session in 2010.

United Kingdom of Great Britain and Northern Ireland

19. The Special Rapporteur undertook an official visit to the United Kingdom of Great Britain and Northern Ireland from 22 to 26 June 2009. During his visit, the Special Rapporteur met with representatives of a number of governmental authorities, including officials of the Foreign and Commonwealth Office and the Home Office. He also met with the Children's Commissioner for England and his deputy, as well as with a number of senior officials of the Department of Health and the Department for Children, Schools and Families. During his visit, the Special Rapporteur also met with several officials of the United Kingdom Border Agency.

He visited London, as well as Heathrow airport and the districts of Dover and Gosport. At Heathrow airport, he was given the opportunity to observe operations and was briefed on the processing of European Union and non-European Union passengers and the iris inspection, watch house, fingerprinting, photographing and screening interview processes. He also visited holding centres in terminals 1 and 2. In the districts of Dover and Gosport, the Special Rapporteur visited immigration removal centres, where he was provided with the opportunity to interview inmates charged with immigration-related offences.

20. At the conclusion of his visit, the Special Rapporteur highlighted the fact that migration is recognized as one of the great issues of our time and perceived as a highly sensitive, controversial and contentious issue at the policymaking and decision-making levels in the United Kingdom, requiring a multilateral and multidimensional approach. He noted that the Government had made a genuine effort to deliver a migration policy, ensuring its prerogative to determine the conditions of stay and removal of non-nationals while being consistent with human rights obligations, but highlighted that there seemed to be a significant number of allegations of cases of prolonged detention of irregular migrants waiting for deportation. The Special Rapporteur was encouraged by a number of good practices in the United Kingdom in relation to the treatment afforded to non-national unaccompanied minors, and invited the Government to strengthen efforts to introduce holistic age-assessment procedures in order to diminish subjective criteria for age assessment. The Special Rapporteur will submit a report on his visit to the United Kingdom to the Human Rights Council at a session in 2010.

III. Issues in focus

A. The protection of children in the context of migration

21. The Special Rapporteur submitted a thematic report to the Human Rights Council on the protection of children in the context of migration (see A/HRC/11/7), and wishes to draw the attention of the General Assembly to some of the issues that he deems to be worthy of special attention.

1. General background and protection gaps

22. The Special Rapporteur observed that children have always been part of migration and affected by it in various ways. In countries of origin, children left behind by migrant family members are affected. In countries of transit, children on the move are affected also at the pre-departure and arrival stages of the migration process. In countries of destination and host countries, migrant children are affected at the arrival, post-arrival, long-term-stay and integration stages of the process. Although migration potentially enhances a child's opportunities and future choices, many forms of migration, as well as the treatment provided to children during the migration process, can pose serious threats to children's rights.

23. The experience of migration for children may include a variety of situations. The most common way for children to move across borders is with their parents or accompanied by extended family members or other adults. However, children are also increasingly seeking migration opportunities to move across borders autonomously and unaccompanied. Children are also increasingly part of mixed

migratory flows, which are mass population movements, including of refugees, asylum-seekers, economic migrants and other migrants. Falling prey to transnational organized crime and exploitation practices, including smuggling, trafficking in persons and contemporary forms of slavery, described, in some instances, as abusive forms of migration, may be a part of the migration experience for many children.

24. Like adult migration, child migration is influenced by political, social, economic and environmental situations. These may include new global phenomena, such as climate change, the food crisis and the financial and economic crisis. Child specific phenomena, such as child abuse and domestic violence, may also influence the movement of children across borders.

25. Ensuring the protection of the child in the context of migration demands that issues related to irregular migration be considered, since they may affect the child's enjoyment of human rights. For example, the criminalization of irregular migration, an issue addressed by the Special Rapporteur in his 2008 report to the Human Rights Council (A/HRC/7/12), has proved to be at the root of ill treatment and other human rights abuses. This is of particular concern in the case of children — especially those who are unaccompanied and undocumented — in countries of transit and destination where irregular migration is punished with imprisonment, particularly when migration management policies have yet to mainstream a child rights approach.

26. The protection of children during migration necessarily implies a gender dimension, since women and girls account for almost 50 per cent of international migrants. The need to take into consideration the special vulnerability of the girl child to gender-based violence and discrimination is illustrated by, inter alia, the fact that additional restrictions on travel relating to male guardianship can have an impact on the number of girls resorting to irregular channels to migrate. The gender dimension of migration also includes issues relating to trafficking in persons for purposes of sexual exploitation, forced labour and other forms of exploitation, as well as other abuses to which the girl child is more vulnerable during migration, such as requests for sexual favours in exchange for protection or for the promise to cross borders.

27. The Special Rapporteur observes that in countries both of origin and of destination, serious concerns remain related to child labour, and he wishes to draw the attention of the General Assembly to rampant child labour practices associated, in some instances, with the lack of law enforcement in this area.

28. The Special Rapporteur also wishes to draw attention to two major gaps that he has identified in relation to the protection of the rights of migrant children. The first protection gap relates to the lack of specific provisions on children in migration laws, policies and programmes. Most migration laws do not reflect a child rights perspective, nor do they have specific provisions relating to children.

29. In the view of the Special Rapporteur, that first gap should be addressed in part by harmonizing migration laws, programmes and policies with the Convention on the Rights of the Child and other relevant international and regional human rights instruments. For example, the Special Rapporteur is informed about cases of deportation and detention where children suffer the same consequences (and receive the same treatment) as adults, which often results in children being deprived of their rights. For that reason, public policies and programmes should ensure the protection

of children from detention and deportation, and migration laws should include concrete regulations to respect children's rights and needs in such circumstances. In particular, laws should include such child rights principles as detention as a last resort; priority and alternative measures to detention; and prohibition of the deportation of unaccompanied children as a punishment for irregular migration status.

30. Incorporating a child rights perspective in migration laws, policies and programmes, together with a rights-based approach, will ensure both that the particular needs and rights of children are expressly included (the principle of "childhood integral protection" should be fully incorporated in migration law and policies) and that all human rights are recognized for all migrant children, irrespective of age, sex, nationality or migration status.

31. The second general gap concerns public policies aimed at children. In many countries, policies meant for the protection of the rights of the child (most of them based on the Convention on the Rights of the Child) have not yet taken into account the specific conditions and needs of migrant children (in the United Kingdom, civil society has highlighted the Government slogan "Every child matters" in order to advocate for the inclusion of child migrants in public policies on childhood). This gap is evident in policies concerning, inter alia, education (such as access, dropping out and language barriers), health care, birth registration, adolescent professional training and commercial sexual exploitation.

32. The Special Rapporteur deems it important to highlight a number of issues related to the protection of children in the context of migration, particularly in relation to the situation of children left behind by migrant parents, children on the move and children in host countries. He also deems it important to highlight some of the good practices that have been brought to his attention and a number of major challenges that remain to be overcome in protecting the human rights of migrants.

2. The situation of children left behind

33. The Special Rapporteur has observed that migration affects children raised in their home countries or their countries of habitual residence who have been left behind by the adult migrants responsible for them, such as one or both parents, extended family members, legal guardians or caregivers. Children in this category, commonly referred to as "children left behind", are often neglected in laws, programmes and policies dealing with children in general and migration in particular.

34. The Special Rapporteur recognizes that many factors may play a role in assessing how migration affects the rights of children left behind. Some studies document that children left behind might be at greater risk for psychosocial trauma, violent behaviour, drug abuse and teenage pregnancy, and suggest that parental absence creates additional challenges, including family instability, a greater burden on the household and social stigmatization.

35. Furthermore, social policies in countries of origin or residence — for example, the kind of social support available for the protection of children — and the specific living situation of the child in his or her country of origin or residence are key factors in determining the impact of migration on children left behind. Furthermore, many parents and other family members initially migrate without children, but

subsequently plan to bring them to a host country. It is therefore important that States of origin develop policies and strengthen bilateral, regional and international cooperation to reduce the number of unaccompanied children seeking to join their parents or other family members in host countries through irregular channels.

36. Gender is also one of the factors that may play a role in determining how migration affects the rights of children left behind. Research studies carried out in the Latin American region, for example, suggest that children left behind may be affected differently by the absence of their mother compared with the absence of their father, given that when a family member migrates, relations are redefined and subsequent changes in roles and responsibilities affect the daily life of the child. Furthermore, studies conducted by the International Labour Organization in Tajikistan suggest that the prolonged absence of the male head of household often leaves the rest of the family destitute.

37. The Special Rapporteur continues to receive information about instances in which children left behind are obliged to take on huge tasks inappropriate to their age or are subjected to physical, psychological or sexual abuse by the relatives or neighbours to whom they have been entrusted during their parents' absence. The Special Rapporteur has also been informed of instances in which households have endured increased economic and psychological vulnerabilities, such as families left behind being weighed down by debt, exploited by moneylenders and vulnerable to pressure from and control by relatives because of their dependency on remittances.

38. The Special Rapporteur wishes to draw the attention of States to the need to protect children left behind, and strongly recommends that the situation of children staying behind in countries of origin be included on the agenda in international debates and forums on migration issues. The Special Rapporteur also encourages all relevant actors to undertake further studies to better understand the impact of migration processes on the well-being and enjoyment of human rights of children left behind in countries of origin. He also recommends the compilation and sharing of best practices in addressing the situation of children left behind in countries of origin, especially in the area of education.

39. The Special Rapporteur further encourages States to develop public policies to address the situation of children left behind in countries of origin, taking into account the best interests of the child as a guiding principle and ensuring the participation of such children in the design and implementation of those policies. He also encourages States to develop public policies to prevent the irregular migration of children and to undertake public information campaigns in communities of origin to alert them to the dangers of irregular migration and to inform them of existing protection mechanisms.

3. The situation of children on the move

40. The Special Rapporteur observes that children may be found "on the move" in a wide variety of circumstances, in particular at the passage and arrival stages of migration in countries of transit and destination. Children migrate with family members or independently, to seek both educational and employment opportunities. They may also be rejoining migrant members of the family or be in the process of being relocated or sent by families to stay with relatives or friends in third countries. Children may also be forcibly on the move, such as when they fall prey to

transnational organized crime and exploitation networks or when they are sent by family members to work abroad to send remittances back home.

41. The Special Rapporteur is particularly concerned about the situation of unaccompanied and undocumented children on the move and the greater vulnerabilities and risks that they may face, including, but not limited to, discrimination, sexual and other forms of violence, and being coerced into begging, drug dealing or prostitution by criminals or criminal organizations. Cases of children who have been expelled at international borders or held in detention facilities under conditions that endanger their well-being and physical integrity, thus raising humanitarian concerns, have often been brought to the attention of the Special Rapporteur.

42. The Special Rapporteur is also concerned about the higher risk for children in this category of being deported without being granted access to the protection measures to which they are entitled, especially the most vulnerable, such as child victims of the sale of children or trafficking in persons, who, in addition, are often treated like adult irregular migrants.

43. In paragraphs 44 to 51 below, the Special Rapporteur identifies a number of human rights issues of particular concern affecting children on the move, including those who are undocumented and unaccompanied.

44. The Special Rapporteur wishes to highlight the inadequacy of migration-related detention measures for unaccompanied children, in line with the work of the Committee on the Rights of the Child, and encourages States to include alternative measures to detention and to accord priority to such measures in their legislation.

45. The Special Rapporteur also encourages States to develop public policies which ensure the effective enforcement of these alternative measures by the competent authorities, both administrative and judicial. For example, any detention order to be applied to a child should justify the reasons for not applying alternative measures, and the place of detention should be chosen for the child's integral protection, bearing in mind that children should not be detained in prisons or with adults.

46. The Special Rapporteur considers that child protection approaches should be at the core of the goals and functions of detention institutions/centres, and should include the realization of such rights as, inter alia, education, health care, recreation, consular assistance, guardian protection and legal representation. Furthermore, detention centres should be managed by childhood protection officers who have received training on children's rights.

47. The Special Rapporteur recommends that migration officials be trained, including on the rights of the child and cultural sensitivities, and that States ensure that age-assessment processes comply with international standards, which include access to effective remedies to challenge age-assessment decisions. States should also consider ensuring that children are accorded the benefit of the doubt in age-determination procedures.

48. The Special Rapporteur further invites States to develop standardized procedures to ensure access to asylum procedures for unaccompanied migrant children who cannot return to their countries of origin because their lives, safety or

freedom are at risk, and to ensure an assessment of the situation in the country of origin or habitual residence of the children before deciding on their repatriation.

49. The Special Rapporteur encourages the collection of data at the national level and the preparation of studies and research on unaccompanied or separated children, and encourages States to follow the guidance for the protection of the rights of unaccompanied migrant children provided in general comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children.

50. The Special Rapporteur encourages consular services to continue ensuring respect for the rights of the child in the context of the return of migrant children and invites States to conclude bilateral and multilateral agreements based on existing international human rights norms and standards and to increase cooperation at the regional level to protect migrant children, especially those unaccompanied, including in matters relating to safe repatriation, the fight against trafficking, sexual exploitation and smuggling and assistance to victims.

51. The Special Rapporteur encourages the establishment and implementation of institutionalized services and programmes to provide comprehensive support and protection to migrant children, especially those unaccompanied, including the means to detect those who are in need of international protection. Protection services should include access to food, health care and legal advice; support for return to the community of origin; professional and vocational training; and the quest for durable solutions in the case of refugee children. The Special Rapporteur also recommends that protection programmes include reproductive and sexual health awareness and training to address psychological trauma.

4. The situation of children in host countries

52. The Special Rapporteur notes the broad spectrum of situations in which children may be found in host countries. Examples include children of migrant workers, unregistered children from an irregular migrant background, undocumented children who are outside the State of their habitual residence and children who, having been denied the status of refugees, go underground and become irregular migrants.

53. The Special Rapporteur wishes to remind States that child victims of transnational organized crime should not be regarded as criminals or irregular migrants, but as victims entitled to appropriate assistance and measures of protection. Applicable legal instruments, such as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the two protocols supplementing the United Nations Convention against Transnational Organized Crime contain similar provisions, emphasizing that States parties should take appropriate measures to protect the rights and interests of child victims of those practices and adapt procedures that take into consideration their special needs and vulnerabilities.

54. The Special Rapporteur has identified two areas where States should enhance efforts to provide rights-based responses to protect children in host countries. The first area relates to the general protection of children affected by transnational organized crime. The second area relates to the full enjoyment of human rights by children from a migrant background.

55. The first includes "grey areas" relating to the general protection of the child affected by transnational organized crime. For example, the classification of a child as a trafficking victim implies in some instances additional migration obstacles for the child at the border or forced return to his or her place of origin, without taking into consideration the child's view on such return to the country of origin, in proportion to age and maturity, as established by article 12 of the Convention on the Rights of the Child. Furthermore, the criminalization of traffickers is sometimes construed in a way that undermines or diminishes the child's rights, for example, when affording protection to a child victim is conditional on the child's agreement to testify against the traffickers in court.

56. The Special Rapporteur is also concerned about the situation of children born and living in countries to which their mothers have been trafficked, particularly when there is a well-founded fear of reprisals against them by traffickers and when such children are left behind because their mothers are in police custody or detention centres as a result of police or immigration raids.

57. The second area with regard to which host countries should enhance protection relates to children from a migrant background. Children in this category do not necessarily fall under the definition of migrant children, but they are affected by the immigration background of their parents or family members.

58. The Special Rapporteur has identified irregular migration and its criminalization as causes for deep concern in relation to the effective protection of migrant children. When criminalized, irregular migration has proved to be a deterrent to, for example, childbirth registration, because irregular or undocumented migrants usually fear imprisonment and/or deportation and therefore try to avoid all contact with local authorities. Barriers to birth registration and/or its denial have serious consequences for the enjoyment of human rights, including the right to be recognized as a person before the law. Furthermore, States should prevent situations of statelessness, in accordance with article 1 of the Convention on the Reduction of Statelessness.

59. The Special Rapporteur wishes to draw the attention of States to the need to adopt a comprehensive rights-based approach to the management of migration, since migration policies may have a direct impact on the enjoyment of human rights by children. Policies that exclude legal avenues for the regularization of irregular migrants and prohibit the access of irregular (adult) migrants to employment may also have an impact on the standard of living of children. Migration policies should therefore take into consideration the impact that they may have on the enjoyment by migrants of their human rights. In this connection, the Special Rapporteur wishes to highlight the fact that regularization policies constitute a good example of practices aimed at strengthening social integration and cohesion, ensuring the human rights of migrants and attaining State goals such as social security, public health-care coverage and social inclusion. Regularization measures should benefit unaccompanied children and children with their families; they should have the necessary flexibility to improve the social integration of migrants, as well as provide access to fundamental rights, including the right to seek and obtain employment.

B. Good practices

60. In discharging his mandate, the Special Rapporteur has encountered a number of initiatives, activities and policies implemented by Governments and civil society that reflect their commitment to the realization of human rights in the context of migration. The Special Rapporteur wishes to highlight some examples focused on the human rights of migrants, with particular emphasis on the rights of the child; the examples provided are not exhaustive. The Special Rapporteur also believes that it is important to increase efforts to exchange information on the ways in which Governments and international and regional non-governmental organizations around the world are trying to promote respect for the human rights of migrants throughout the migration process with a view to helping States to fill in policy and protection gaps at all levels.

Enhancing cooperation between countries of origin and destination

61. The attention of the Special Rapporteur has been drawn to the migration of health professionals as a serious impediment to the delivery of health-care services to the population in communities characterized by high levels of migration, which in some countries of origin also affects the provision of health-care services to children. In this connection, the Special Rapporteur welcomes efforts made by some host countries to transform migration challenges for countries of origin into opportunities for cooperation. A good example is the Migration and Development for Africa pilot project, launched by the Helsinki office of the International Organization for Migration with the support of the Ministry of Foreign Affairs of Finland, which promotes the return of qualified professionals of Somali background on a temporary basis to Somaliland and Puntland to assist and share their skills with local health authorities, civil society organizations, hospitals and universities.

62. The Special Rapporteur has also been informed about bilateral efforts to promote learning of the heritage language in host countries among migrant children and children from a migrant background, as in the case of States members of the European Union, where such bilateral agreements are envisaged under directive 77/486/CEE. The Special Rapporteur welcomes such initiatives.

Enhancing cooperation between countries of origin and diaspora communities

63. The Special Rapporteur welcomes the efforts and initiatives of countries of origin to enhance cooperation with diaspora communities, as in the case of Ethiopia, where, in 2008, the Government established the Ethiopian Expatriate Affairs Direction and the Diaspora Coordination Offices within the Ministry of Foreign Affairs and the Ministry of Capacity-Building, respectively, with a view to enhancing protection for the Ethiopian diaspora community.

64. The Special Rapporteur also praises efforts made by Governments to promote the contribution of skilled emigrants in the development of their country of origin, as in the case of Albania, where an online "brain-gain" database has been implemented with the support of the United Nations Development Programme to allow skilled emigrants to contribute in various domains, including, but not limited to, academia and the private sector.

Raising prospective migrants' awareness of human rights

65. The Special Rapporteur welcomes joint efforts implemented by Governments, civil society and intergovernmental organizations to provide assistance and information to prospective migrants. Such is the case in Colombia, where, in Bogotá in December 2008, the first assistance and information centre for international migrants was opened with the aim of promoting regulated and dignified migration through the provision of information and technical advice, including on the rights of migrants and protection options available within and outside Colombia. The Centre is part of a pilot project managed by the International Organization for Migration and the General Labour Confederation, with the support of the Ministry of Social Protection.

Strengthening the role of national human rights institutions in the protection of the human rights of migrants

66. The Special Rapporteur welcomes the significant increase in efforts undertaken by national human rights institutions to protect the human rights of migrants, as in the case of the region of Asia and the Pacific, where a regional plan of action for such institutions has been put in place aimed at ensuring cooperation with a view to ending impunity for trafficking in persons. Special focal points and units dedicated to migration, refugees and displacement have also been established within national human rights institutions.

67. The Special Rapporteur praises the initiative undertaken in 2008 by national human rights institutions in Asia, led by the national human rights institutions of the Republic of Korea, to develop a number of guidelines, inter alia, to ensure the protection of migrants' rights in multicultural societies, including strategies such as campaigning for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; developing and strengthening remedies to address human rights violations committed against migrants, in particular against those who are undocumented or in an irregular situation. The Special Rapporteur also welcomes the initiative of national human rights institutions in Indonesia, Malaysia, Thailand and the Philippines to launch a joint research project to examine the main concerns of migrant workers in the region with a view to making appropriate recommendations to Governments.

Access to health care regardless of immigration status

68. The Special Rapporteur has been informed of some progress made in the protection of migrant children, particularly in relation to the extension of health coverage and care services, regardless of the immigration status of those concerned. The Special Rapporteur on the right to health has documented a good practice in Sweden, where undocumented children receive health-care assistance on the same basis as resident children.

69. The Special Rapporteur also welcomes the fact that some States in the Latin American region, in particular Uruguay (law 18.250, art. 9) and Argentina (law 25.871, art. 7), have prohibited the denial of health-care services on the grounds of irregular migration status.

Equality in access to education for migrant children

70. The Special Rapporteur also welcomes the efforts of host countries to improve equality in access to education for migrant children. This is the case in a number of developed countries, including Japan, where migrant children, regardless of their immigration status, are allowed to enrol in public schools free of charge. It is also the case Uruguay (law 18.250, art. 11) and Argentina (law 25.871, art. 8).

Including the protection of children left behind in laws, policies and programmes

71. The Special Rapporteur praises the initiatives of some States to include the protection of children left behind by migrating family members in national laws, policies and programmes. A good example is the case of Romania, where, in response to calls from non-governmental organizations, the mass media and local authorities, the National Authority for the Protection of Children's Rights launched a process to identify and constantly monitor children whose parents had gone to work abroad after 2006. Furthermore, by order No. 219 of 2006, local authorities are responsible for identifying cases of children left behind, and parents who go abroad on employment contracts have an obligation to notify local authorities of their intention to leave and tell them who will be in charge of caring for the children.

Including migrant children in early childhood services

72. The Special Rapporteur commends efforts undertaken by a number of countries belonging to the Organization for Economic Cooperation and Development, including Germany and Canada, to ensure that migrant children benefit from early childhood services aimed at developing children's capacities in general, while also addressing specific issues, such as command of language among children who have little opportunity to speak the local language in their families or neighbourhoods.

C. Main challenges

73. The following paragraphs outline some of the observations and recommendations of the Special Rapporteur with respect to some of the main human rights challenges in the context of migration, with particular emphasis on the protection of children.

Combating discrimination, xenophobia and related intolerance against migrants

74. The Special Rapporteur wishes to draw attention to the interconnection between xenophobic and racist attacks against migrants and their non-national status. In many cases, there are no legal channels for migration, which leads to irregular migration and often produces anti-migrant responses within society. The increase of such responses as a result of the global financial crisis should be considered as a warning that xenophobic outbreaks may be on the rise.

75. The Special Rapporteur also wants to draw attention to the problem of discrimination, which in some instances arises when conditions of labour migration involve situations of abuse, not only by groups and individuals connected with organized crime who sell identity papers to potential migrants, but also by

employers who, in order to avoid social security payments or taxes in their countries, hire undocumented workers, termed "illegal" by the immigration authorities. The victim is thus criminalized or otherwise penalized, while the traffickers and the employers take advantage of the lack of legal, social and economic protection for undocumented workers and remain unpunished.

76. The Special Rapporteur recalls the need for a serious and in-depth approach to combat racism, racial discrimination, xenophobia and related intolerance, which are having a negative effect on the enjoyment of human rights by migrants. Furthermore, the Special Rapporteur encourages Governments, in particular in countries of transit and destination, to promote greater harmony, tolerance and respect among migrants, asylum-seekers, refugees and the rest of society, with a view to eliminating acts of racism, xenophobia and other forms of related intolerance directed against migrants.

77. The Special Rapporteur also call upon States to consider implementing the Durban Declaration and Programme of Action, as well as the outcome document of the Durban Review Conference.

The criminalization of irregular migration

78. The Special Rapporteur observes that a number of countries still consider breach of migration law to be a criminal offence (for example in cases of irregular entry, lack of a residence permit, the use of an expired residence authorization or unauthorized re-entry after a deportation and re-entry prohibition decision) and is deeply concerned about the resulting detrimental impact, in particular on children, since in most countries migration laws lack a children's rights perspective. For this reason, the Special Rapporteur wishes to stress that the criminalization of irregular migration leads to human rights violations, and recalls previous recommendations that he has made on this issue encouraging States to view irregular migration as an administrative rather than a criminal offence, reversing the trend towards greater criminalization.

79. The Special Rapporteur wishes to highlight the fact that the criminalization of undocumented migrants for the offence of being in a country without proper papers makes them vulnerable to potential racist or xenophobic acts in the societies of the countries involved. Society distorts their situation, regarding them as "delinquents", and is quick to connect them with organized crime, including drug trafficking and robbery. Their undocumented status makes many migrants vulnerable to the point of becoming easy prey for criminal networks.

80. The Special Rapporteur wishes to draw the attention of the General Assembly and international society in general to the danger of such reactions, not only for migrants, but also for migrants' societies of destination, in which the patterns of individual and group behaviour being established will have a negative impact on their children's upbringing, as xenophobic models are handed down by adults and discriminatory sectors of society. The Special Rapporteur therefore suggests that States that still punish irregular migration with imprisonment revise and reform their migration laws and decriminalize irregular migration.

Sustainable return and reintegration

81. The Special Rapporteur highlights the importance of ensuring the reintegration of migrants who return to their countries, either voluntarily or involuntarily, and encourages the design and implementation of programmes for the sustainable return and reintegration of children, including alternatives to return on the basis of the best interests of the child.

82. The Special Rapporteur suggests that reintegration programmes take into account the social and human aspect of migration, including the psychological effects of uprooting, the difficulties of reinsertion in the labour market and problems linked to the existence of debt in the country of origin, and recommends the development of comprehensive reintegration programmes involving migrants, their families, Governments and civil society at large.

83. The Special Rapporteur encourages Governments to increase efforts to implement registration systems for their migrating citizens and to monitor their return. That in turn would help in monitoring the situation of children left behind and make it possible to assess the problems faced by returnees and to develop appropriate strategies to facilitate their social and economic integration.

Deportation of children

84. The Special Rapporteur is concerned about the protection of the human rights of children who are subject to deportation and wishes to insist on the importance of respecting the best interests of the child in such procedures.

85. The Special Rapporteur invites States to give consideration to the principle of non-deportation of unaccompanied children, whereby children should be repatriated only if it is in their best interests, namely, for the purpose of family reunification and after due process of law. The Special Rapporteur notes that the enforcement of this principle would require public policies and a legal framework in both the country of origin and that of destination. In this regard, the Special Rapporteur regrets that the recently adopted European Union return directive (2008/115/EC) authorizes the deportation of children migrants in the same sense as adults (art. 10), despite some specific protection measures. No distinction is made regarding the nature of the deportation, which in both cases is a "punitive approach" instead of a "protection approach", as stressed by the Committee on the Rights of the Child and other human rights institutions and mechanisms at the global and regional levels.

86. The Special Rapporteur also wishes to emphasize that mechanisms are also needed to ensure children's rights and perspectives within the deportation procedures of their parents (based on their migration status), especially their right to be heard. While States tend to consider the rights of the adults involved in such procedures (including the right to the family unit), there is no specific mechanism that considers the rights of their children.

Migration-related detention of children

87. Migration-related detention of children should not be justified on the basis of maintaining the family unit (for example, detention of children with their parents when all are irregular migrants). As the United Nations Children's Fund and other experts have stressed, detaining children will never be in their best interests. Hence, the ideal utilization of a rights-based approach would imply adopting alternative

measures for the entire family; States should therefore develop policies for placing the entire family in locations alternative to closed detention centres.

88. Some countries make distinctions among children (for instance, children above 12 years of age) with regard to detention policy. In such cases, children over 12 years of age are detained in detention centres, while those under 12 are placed in protection centres for children. Such a practice should be considered an unlawful interpretation of article 1 of the Convention on the Rights of the Child. Furthermore, adolescents should not be treated as adults.

Double victimization of trafficked persons

89. The Special Rapporteur observes with regret that in some instances victims of trafficking in persons, especially women and children, face double victimization. The Special Rapporteur has received information about persons being trafficked and then charged with illegal entry or the forging of documentation, disregarding their condition as victims of transnational organized crime.

90. The Special Rapporteur wishes to emphasize that States should provide assistance to victims of trafficking irrespective of their cooperation in relation with judicial proceedings, and invites States to strengthen efforts to improve victim identification processes and the corresponding referral mechanisms, including referral to asylum-seeking systems, where appropriate.

91. The Special Rapporteur encourages States to ensure the application of international standards and a human rights-based approach to victim protection, taking into account a gender perspective and the special needs of children. A human rights-based approach to victim protection should include, inter alia, access to a range of assistance services, the granting of a reflection period, access to compensation, the possibility of temporary or permanent residency and the non-liability of victims for involvement in unlawful activities as a result of being trafficked.

IV. Conclusions and recommendations

92. **Ensuring that all migrants, regardless of their immigration status, enjoy their internationally recognized human rights at all stages of the migration process should be the guiding principle of migration governance. Despite the progress made, much remains to be done to ensure the enjoyment by migrants of their human rights.**

93. **As discussed throughout the present report, there are a number of issues of concern that warrant further attention, cooperative effort and protection-sensitive and human rights-tailored responses. In the light of the foregoing, the Special Rapporteur wishes to put forth a number of general recommendations for further consideration and action.**

94. **States should effectively promote and protect the human rights and fundamental freedoms of all migrants, in particular those of women and children, regardless of their immigration status, in conformity with the Charter of the United Nations and international human rights standards.**

95. **States that have not yet done so should incorporate the applicable legal frameworks on human rights, the protection of the child, the protection of migrant workers and their families, the protection of asylum-seekers and refugees, the fight against transnational organized crime and the elimination of contemporary forms of slavery into their national laws and policies, as well as into their bilateral and regional agreements for migration management.**

96. **States should review their national and regional laws and policies to harmonize them with the international legal framework on the protection of the human rights of migrants, with particular attention to the protection of the rights of the child. Immigration laws and policies should include concrete regulations aimed at protecting the rights of the child in the context of migration and fulfilling their specific needs in migration-related circumstances.**

97. **States should ensure the protection of the child in all migration-related circumstances, regardless of the immigration status of the child or his or her family, and take into account the best interests of the child as a primary consideration in all migration-related initiatives and actions concerning children at all levels.**

98. **States are encouraged to consider the impact of migration on children in the elaboration and implementation of national development frameworks, poverty reduction strategies, human rights action plans, and programmes and strategies for human rights education and the advancement of the rights of the child.**

99. **States are also encouraged to adopt and develop programmes and policies to address significant gaps remaining in social policies and other areas where the protection of the human rights of migrants in general, and the protection of migrant children in particular, has yet to be mainstreamed.**

100. **In the context of the current economic crisis, States should pay particular attention to preventing human rights abuses against migrants and avoid unreasonable restrictions on labour migration. All stakeholders need to continue to make a serious effort to put an end to violations of migrants' human rights and to show their determination to resolve the issue.**